IN THE

Supreme Court of the United States

October Term, 1969

No. ~~170~~ 24

WILLIAM P. ROGERS, Secretary of State,
Appellant,

v.

ALDO MARIO BELLEI,
Appellee.

APPELLEE'S BRIEF

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Question Presented

Can the Congress, consistent with the due process clause of the Fifth Amendment, withdraw United States citizenship, acquired at birth, absent a voluntary renunciation?

Statement of the Case

The appellee, Aldo Mario Bellei, like his mother, has always valued his United States citizenship. He prizes it now. He has always wanted to have his United States citizenship. He wishes to have it now.

On four of the five times that he came to this country he traveled on a United States passport. The fifth time he wanted to do so, but our State Department would not permit it. That was the time he came here with his bride on their honeymoon to visit his grandparents on his mother's side.

Moreover, the appellee has never done anything to jeopardize his United States citizenship. At the time that our State Department advised him that he no longer held American nationality, he was working for an organization engaged in the NATO defense program.

The federal three-judge district court below succinctly stated the facts in one paragraph of its opinion:

> Plaintiff, from birth has been treated as an American citizen by the United States Government. He has been welcomed to this country without visas or other immigration papers required of foreigners. He has availed himself of his unlimited access to come to this country on several occasions and to visit with his mother's family. Plaintiff has also traveled at all times under American diplomatic protection. On his first two visits Bellei traveled on his mother's American passport. On the last two occasions when plaintiff visited the United States, he journeyed under his own American passport, which had been issued in 1952 and periodically renewed until 1964. He was subject to the military service laws and he registered for the draft in 1960.[3]

3. His scheduled induction in 1963 was deferred because of his employment with a NATO defense program.

296 F. Supp. at 1248 (A. 16-17).

The appellee was born at Ancona, Italy, on December 22, 1939. His mother, Theresa Lola Bellei, nee Cesaretti, was born in Philadelphia, Pennsylvania, on March 14, 1915 and resided in the United States until March 23, 1939. When she was 24 years old, she went to Italy to live with her husband, whom she had married in Philadelphia, Pennsylvania, on March 14, 1939. At the time of appellee's birth his mother was, and always has been a citizen of the United States (A. 5).

The appellee was physically present in the United States from April 27, 1948 to July 31, 1948, from July 10, 1951 to October 5, 1951, from June of 1955 until October of 1955, from December 18, 1962 to February 13, 1963, and from May 26, 1965 to June 13, 1965. On the first two such occasions the appellee came to the United States on his mother's passport. She was in possession of a United States passport, and was admitted to the United States with her children as citizens of this country. On the next two such occasions, he came to the United States on his own United States passport, and was admitted to the United States as a citizen of this country (A. 5-6).

For nearly a dozen years, from 1952 to 1964, the appellee as a United States citizen had his own United States passport. He was first issued his own United States passport on June 27, 1952. Thereafter his passport was periodically renewed (A. 6).

On March 28, 1960 the appellee registered under the Selective Service laws of the United States with the American Consul in Rome, Italy. He was asked to report for a physical examination and passed such examination

by the U.S. Army at Leghorn, Italy. On December 11, 1963 he was asked to report for induction at Washington, D.C., but his induction was deferred because he was employed on a NATO defense program. After February 14, 1964 he received a letter from the United States Selective Service explaining that due to loss of his United States citizenship he had no further obligations for military service on behalf of the United States (A. 8).

Summary of Argument

Revised Statutes §1993, as amended by the Nationality Act of 1934, conferred United States citizenship upon the appellee Aldo Mario Bellei at his birth on December 22, 1939. Section 1993, as amended, with its conditions subsequent, was repealed by the Nationality Act of 1940, but Section 504 of this act, 54 Stat. 1172, 1174, 8 U.S.C. §904 (1940 ed.), provided that this repeal "shall not terminate nationality heretofore lawfully acquired." The Congress cannot, consistent with the due process clause of the Fifth Amendment, by a condition subsequent in the form of a five-year residence requirement, sought subsequently to be imposed by Section 301(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1401(b), involuntarily take away appellee's United States citizenship acquired at birth. *Schneider* v. *Rusk*, 377 U.S. 163 (1963); *cf. Afroyim* v. *Rusk*, 387 U.S. 253 (1967).

As a result, the appellee has dual nationality; but the concept of dual nationality as a thing of evil is on its way to becoming obsolete in today's world of United Nations. In today's world, persons with dual nationality should be regarded as an asset rather than a liability.

ARGUMENT

Section 301(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1401(b), which seeks to expatriate the plaintiff without his consent, violates the due process clause of the Fifth Amendment.

Section 301(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1401(b) unconstitutionally seeks to expatriate the plaintiff without his consent because he was not continuously physically present in the United States for at least five years between the ages of fourteen and twenty-eight. In seeking to expatriate the plaintiff without his consent, this section violates the due process clause of the Fifth Amendment. Two recent cases point to this result: *Schneider* v. *Rusk*, 377 U.S. 163 (1963); *Afroyim* v. *Rusk*, 387 U.S. 253 (1967).

Indeed, it may fairly be said that *Schneider* is directly in point. Appellant Angelika Schneider, a German national by birth, acquired derivative United States citizenship through her mother by statute. Thus she was just as much a statutory citizen as appellee is.

Subsequently she returned to Germany, married a German national, and resided in Germany thereafter. In 1959 our State Department certified that she had lost her American citizenship under the provisions of section 352(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1484(a)(1), which expatriated naturalized citizens for continuous residence for three years in the country of their birth.

Appellant had four sons, two born before 1959 and two after. As to them the Court said:

> * * * Two of her four sons, born in Germany, are dual nationals, having acquired American citizenship under §301(a)(7) of the 1952 Act. The American citizenship of the other two turns on this case.

377 U.S. at 164.

The Court held that section 352(a)(1), 8 U.S.C. §1484 (a)(1), violated the due process clause of the Fifth Amendment, saying in the concluding paragraph of its opinion:

> This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make. Moreover, while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process." *Bolling* v. *Sharpe*, 347 U.S. 497, 499. A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may indeed be compelled by family, business, or other legitimate reasons.

377 U.S. at 168-69.

In *Afroyim* v. *Rusk*, 387 U.S. 253 (1967), the Court in a sense went even further; for there it held, overruling *Perez* v. *Brownell*, 356 U.S. 44 (1958), that a United States citizen would not lose his citizenship by the affirmative act of voting in a foreign election. In that case the petitioner was a naturalized American citizen who had been born in Poland, and had voted in an Israeli election. The Court after pointing out that it had "consistently invalidated on a case-by-case basis various other statutory sections providing for involuntary expatriation" (at p. 255), held unequivocally that no citizen's citizenship could be taken away without his consent (except of course for a naturalization unlawfully procured). The Court reasoned:

> Petitioner, relying on the same contentions about voluntary renunciation of citizenship which this Court rejected in upholding §401(e) in *Perez*, urges us to reconsider that case, adopt the view of the minority there, and overrule it. That case, decided by a 5-4 vote 10 years ago, has been a source of controversy and confusion ever since, as was emphatically recognized in the opinions of all the judges who participated in this case below. Moreover, in the other cases decided with and since *Perez*, this Court has consistently invalidated on a case-by-case basis various other statutory sections providing for involuntary expatriation. It has done so on various grounds and has refused to hold that citizens can be expatriated without their voluntary renunciation of citizenship. These cases, as well as many commentators, have cast great doubt upon the soundness of *Perez*. * * *
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> * * *
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> First we reject the idea expressed in *Perez* that, aside from the Fourteenth Amendment, Congress has any general power, express or implied, to take away an

> American citizen's citizenship without his assent. This power cannot, as *Perez* indicated, be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support from theirs. In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. * * *
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> * * * Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.
>
> *Perez* v. *Brownell* is overrruled. The judgment is *Reversed.*

387 U.S. at 255-56, 257, 268.

The appellant, seizing on a qualified concession by the court below (296 F.Supp. at 1252; A. 24), tries to make out that dual nationality is an evil (Br. pp. 22-24). There is another point of view: in today's world of United Nations, dual nationality may be a step in the right, not the wrong, direction.

The appellant talks about "permanent absentee citizenship" (Br. p. 40). This is an exaggeration. Under section

301(a)(7) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1401(a)(7), a person born abroad, only one of whose parents is a United States citizen, cannot be a United States citizen at birth unless his United States citizen parent was "a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years." Nor can a child of appellee born abroad be a United States citizen at birth unless appellee "prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years."

The appellant in its brief (p. 39) stresses the lower court's qualified concern that persons such as the appellee "will have no meaningful connection with the United States, its culture or heritage." Of course as to the appellee this statement is not true. He did and does have meaningful connections with the United States, its culture and heritage. He came here repeatedly. His grandparents live here. He was subject to the military service laws and registered for the draft. He took and passed the United States Army physical examination. He was employed on a NATO defense program.

Nor is the statement about lack of meaningful connections with the United States true generally. For example, American women married to Europeans have formed a Paris-based organization called Association of American

Wives of Europeans. One of the purposes of the organization is to give to the children of these mothers some of the emotional attachment which their mothers feel for the United States, and to instill that attachment in these children at an early age. The Association has accordingly developed a program designed to give these children a large measure of American culture and heritage. American holidays are celebrated. There are reading courses in English. There are study groups in American history. The United States, rather than casting aside this valuable new generation of international children, should try to keep them for itself.

Conclusion

The judgment of February 28, 1969 of the three-judge federal district court for the District of Columbia should be affirmed.

Respectfully submitted,

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